

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the License
Application of Chisago Lakes
Rescue Service, Inc.,
Chisago City, Minnesota

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on November 30, 1993, in Chisago City, Minnesota.

F. Jill Grainger, President/Manager of Chisago Lakes Rescue Service, Inc., 11685 Lake Boulevard North, Chisago City, Minnesota 55013, appeared on behalf of the Applicant.

Timothy Noren, Director of Emergency Medical Services for District Memorial Hospital, 246 - 11th Avenue S.E., Forest Lake, Minnesota 55025, appeared on behalf of District Memorial Hospital. District Memorial Hospital objects to the application, but did not formally intervene as a party. There were no formal intervenors in this proceeding.

The record herein closed on December 1, 1993.

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mary Jo O'Brien, Commissioner of Health, Minnesota Department of Health, 717 Delaware Street Southeast, P.O. Box 9441, Minneapolis, Minnesota 55440-9441 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Has Applicant demonstrated a need to change its license from Basic Life Support to Advanced Life Support, considering the factors listed in Minn. Stat. 114.802, subd. 3(g)?

Based upon the files, records and proceedings herein, the Administrative

Law Judge makes the following:

Procedural History

1. Chisago Lakes Rescue Service (hereinafter "CLRS" or "Applicant") has been providing ambulance service since 1970-71. It currently is licensed at the Basic Ambulance Service ("BLS") level. It has a primary service area covering parts of four counties. The PSA is roughly circular, centered around Chisago City. Chisago City is located roughly 35 miles north-northeast of Minneapolis and St. Paul.

2. CLRS is licensed with a primary service area which includes portions of Chisago, Washington, Anoka and Isanti Counties. It includes the cities of Chisago, Center City, Shafer, Stacy, Wyoming and Forest Lake. In addition, it includes the following territories:

In Chisago County: All of Lent, Chisago Lake, T33 NR 19W, T33 NR 20W, and Wyoming; Sections 19-36 of T35 NR 21W; Sections 19-23 and 25-36 of T35 NR 20W; Section 31 of Amador; and Sections 5-9, 15-22 and 26-35 of Shafer Township.

In Washington County: All of Forest Lake; Sections 1-34 of New Scandia, and Sections 5-7, 18 and 19 of T32 NR 19W.

In Anoka County: All of Linwood; Sections 25-36 of T34 NR 22W; and Sections 1-6 of Columbus Township.

In Isanti County: Sections 35 and 36 of North Branch and Sections 1-3 and 18-24 of Oxford Township.

3. on or about September 17, 1993, CLRS filed an Advanced Life Support license application with the Minnesota Department of Health. CLRS's Application submitted to the Commissioner does not propose to change any PSA boundaries, nor does it propose to alter any 911 dispatching boundaries. All that the Application seeks is an upgrade from one class of license to another.

4. On October 18, 1993, Mary Jo O'Brien, Commissioner of Health, issued a Notice of Completed Application and Notice and Order for Hearing, setting a hearing in this matter for November 30, 1993, in Chisago City.

5. The Notice of Completed Application and Notice and Order for Hearing was published at 18 State Register 1190 on November 1, 1993. In addition, the Notice was published in the following newspapers: Chisago County Press, Center City; Stillwater Gazette, Stillwater; Anoka County Union, Anoka; and the Cambridge_Star, Cambridge.

6. The Notice was also served upon the county commissioners of Anoka County, Chisago County, Isanti County, and Washington County. It was also served upon the Chisago County Community Health Board, the Chisago County CHS/PHN Service, the Washington County Department of Health, the Washington County CHS Administrator, the Anoka County Community Health Board, the Anoka County CHS Administrator, the Isanti Community Health Board, and the Isanti CHS Administrator. A copy was also sent to the Central Minnesota EMS Council

and the Metro 911 Telephone Board EMS Committee. Copies were also sent to 38

ambulance services, including all of those with overlapping PSAs detailed below. Finally, a copy was sent to the Mayor of the City of Chisago City.

7. By a letter addressed to the undersigned Administrative Law Judge dated November 17, 1993, District Memorial Hospital of Forest Lake indicated its opposition to the proposed license upgrade insofar as it would result in duplication of ALS services in certain geographic areas where CLRS's PSA overlaps with District Memorial Hospital's PSA. The letter indicated that DMH did not oppose the advancement to ALS for other portions of CLRS's PSA. It recommended that CLRS amend its application to exclude that part of CLRS's PSA which overlaps DMH's PSA. The letter was marked as Exhibit 2 during the November 30, 1993 public hearing.

8. Pursuant to Minn. Stat. 144.802, subd. 3(e), the Notice of Completed Application and Notice of and Order for Hearing set a deadline of November 30, 1993 for the submission of written recommendations to the Administrative Law Judge. At the November 30 hearing, the Administrative Law Judge indicated that the record would remain open until the close of business on December 1 for purposes of receiving any written comment. The only written comments submitted pursuant to either notice were the aforementioned letter from District Memorial Hospital, plus two other letters submitted on December 1 -- one from CLRS, and the other from District Memorial Hospital.

9. Prior to the November 30 public hearing, the Administrative Law Judge was contacted by District Memorial Hospital and by the Marine Ambulance service. Both inquired about the differences between a formal intervening party and a person who merely wished to state their objections on the record. The Administrative Law Judge explained the differences to both of them. Neither of them chose to intervene.

10. The November 30, 1993 public hearing was conducted so that all persons present had the opportunity to make oral presentations, to present witnesses, submit written data or statements, and to ask questions of others. All of the written submissions were marked as exhibits and made part of the record in this matter. The hearing continued until all interested persons had an opportunity to testify.

11. District Memorial Hospital is located in the city of Forest Lake.

It has operated an Advanced Ambulance Service since 1984. CLRS's PSA currently overlaps the PSA of District Memorial Hospital in the following areas:

In Chisago County: Sections 29-34 of Lent Township, Sections 2-11 and 13-36 of Wyoming Township, and Sections 18-20 and 29-33 of T33 NR 20W. This includes the cities of Stacy and Wyoming.

In Washington County: All of Forest Lake Township, as well as Sections 5-8, 17-20 and 29-32 of New Scandia Township. This includes the City of Forest Lake.

in Anoka County: Sections 25-36 of Oxford Township, all of Linwood Township, and Sections 1-6 of Columbus Township.

This overlap is illustrated graphically in a map attached to Exhibit 2. While Chisago Lakes is currently a BLS ambulance, District Memorial is currently an ALS operation. In theory, therefore, the overlapping area has received service from both. However, in practice, that does not occur.

12. CLRS's PSA also overlaps with North Branch Area Rescue Service's PSA. North Branch is currently a BLS ambulance in the process of seeking an upgrade to ALS status. North Branch does not oppose Chisago Lakes' upgrade proposal, although North Branch believes that a clarification is needed regarding the overlapping PSAs. Although North Branch believes that the current "Practical" boundaries (dictated primarily by the Chisago County Sheriff's Office 911 dispatch zones) are satisfactory, North Branch believes that the formal PSA overlaps need to be resolved at some point. North Branch currently serves the city of Stacy, as well as the following areas which overlap with CLRS's PSA:

Oxford Township (Section 1-3, 9-15 and 22-24) North
Branch Township (Sections 35 and 36).

13. CLRS's PSA also overlaps with the Marine on St. Croix Ambulance in New Scandia Township in Washington County. CLRS is currently licensed to serve sections 1-34 of New Scandia Township, which is the entire township except for a small corner on the southeast edge. Marine on St. Croix Ambulance is a BLS service licensed to serve all of New Scandia Township. The two services, therefore, do currently overlap and do have a mutual aid agreement (included as part of Exhibit 1). The Marine Ambulance is concerned, however, that the proposed upgrade would result in CLRS becoming the "primary service" in most New Scandia Township. New Scandia Township constitutes approximately 50% of Marine's runs. In calendar year 1992, for example, Marine had a total run volume of only 90 runs, 46 of which were to New Scandia Township. Looking at calendar years 1990, 1991, 1992 and the first nine months of 1993, 55.5% of Marine's runs were to New Scandia Township.

Exhibit 12. Because of its relatively low volume, Marine Ambulance questions whether it could continue to operate if it lost half of its run volume to CLRS. Marine would be happy to enter into agreements with CLRS whereby Marine would call on CLRS for advanced transportation when needed (when CLRS would be the appropriate ALS service to call under the circumstances), but Marine does not want to see CLRS usurp any of the calls presently going to Marine. The Sheriff's 911 boundary line between the two (the Washington County/Chisago County line) is a satisfactory boundary as far as Marine is concerned. It represents a logical dividing point in terms of the quickest response time. If the current situation could continue, Marine has no objection to the upgrade. But it fears the upgrade is just the first step toward CLRS taking business away from the Marine Ambulance.

Description of Proposed Service

14. CLRS is based in Chisago City. It has no substations. It is staffed by a partially paid staff consisting of seven EMT-paramedics, one EMT-intermediate and 16-EMTs. The seven paramedics are paid, the remaining 17 are not.

15. CLRS operates two vehicles, a 1985 Ford and a 1991 Ford.

16. CLRS's average response time is five to six minutes, and its maximum response time is 12 minutes. The maximum distance from the base to the farthest point in the PSA is 15 miles. Within the PSA, there are 15-18,000 residents and 15,000 visitors.

17. If the proposed license had been granted as of January 1, 1994, CLRS estimates that it would make 260 advanced runs, 270 basic runs, 75 specialized advanced runs, and 70 specialized basic runs, for a total of 675 runs, during calendar year 1994. CLRS further estimates that these runs would generate \$305,500 annual operating revenue. It is estimated that an additional \$10,000 of annual non-operating revenue would be received, plus an additional \$7,000 from education classes, giving total revenues and cash contributions of \$322,500. The Applicant further estimates that 68% of this total would be in the form of third-party payments, 17% direct patient payments, 10% public subsidies or grants, and the balance scattered among a variety of other categories.

18. In addition to the above-listed cash income, the Applicant estimates it would receive a variety of in-kind contributions as well. Of a total of \$85,000 of such contributions, \$65,000 would come from volunteer staffing, \$15,000 from equipment, vehicles, facilities, and space, and \$5,000 from other contributions.

19. The Applicant estimates that if the license had been granted as of January 1, 1994, its average ALS patient charge for calendar year 1994 would be \$575, while the average BLS patient charge would be \$365.

20. The Applicant further estimates that its total annual expenses would approximate \$255,000. These would be made up principally of personnel costs (\$103,000), uncollectible accounts (\$91,650), vehicle operations of \$9,200, and other expenses.

21. Applicant's service is currently dispatched through a 911 public service answering point located in the Chisago County Sheriff's Department in

Center City. CLRS's ambulances are able to communicate by two-way radio with all hospitals in its PSA, as well as hospitals and ambulance services in neighboring PSAS.

22. CLRS's medical director is Dr. John P. Eikens, who is affiliated with the Chisago Health Services. He has been trained in advanced cardiac life support, advanced trauma life support, and has agreed to volunteer his services as the medical director.

23. St. Paul Ramsey Medical Center MRCCO has agreed to serve as the affiliated medical institution for CLRS. Ramsey Emergency Medical Services would provide radio medical control for CLRS.

24. Written agreements to provide back-up coverage or "mutual aid" have been entered into between CLRS and Osceola Area Ambulance Service (Osceola, Wisconsin), St. Croix EMS (St. Croix Falls, Wisconsin), North Branch Area Rescue, District Memorial Hospital, and Marine Ambulance Service.

Relationship of Upgrade to Current Community Health Plans

25. According to CLRS's application, the Chisago County Community Health Plan cites heart disease as being responsible for and a major contributing factor to 42.2% of all deaths in Chisago County. In addition, Chisago County has a large geriatric population. While some are in adult apartment buildings or nursing homes, home health care has expanded in the area and there is an increase in the percentage of significantly ill persons who are being cared for at home. In the child and young adult population, unintentional injuries (accidents) are the major cause of death. The area has many lakes and rivers, and has become a year-round tourist area. Motor vehicle accidents with injuries and sports-related trauma continue to increase. In addition to tourism, there is a great deal of travel throughout the area, due to its proximity to the Twin Cities Metropolitan Area and the back-and-forth commuting of many residents. There are two principal highways throughout the area, I-35 and U.S. 8. The latter highway, which serves as a conduit for commuters from Wisconsin, was referred to during the public hearing as "Suicide Alley", due to its heavy traffic volumes and frequency of accidents.

26. A physician testifying at the public hearing indicated that recent research has documented the importance of advanced life support training and patient care in both trauma deaths and cardiac arrests. Exhibit 19A is an article from the Journal of Trauma entitled "The Association of Advanced Life Support Training and Decreased Per Capita Trauma Death Rates: An Analysis of 12,417 Trauma Deaths". The article generally states that there is a significant difference in the mortality rates of trauma victims between those treated with ALS and those treated with BLS. The study demonstrated a significant relationship between availability of ALS systems and decreased trauma death rates. The authors (and editors) were careful to note, however, that it is unclear exactly which aspects of the ALS program are responsible for the decreased trauma death rates. Exhibit 19B is an article from the Annals of Emergency Medicine entitled "Predicting Survival from Out-of-Hospital Cardiac Arrest: A Graphic Model". It predicts that the survival rate of

out-of-hospital cardiac arrest patients increases from 12% to 32% surviving with the addition of ACLS at eight minutes following cardiac arrest, even when both groups had defibrillation by EMTs at six minutes. The article suggests that the highest survival rate could be expected from those who had all three components of a "chain of survival" -- bystander CPR, early defibrillation, and ACLS -- prior to reaching a hospital.

27. CLRS's service area is primarily within Chisago County. However, there are small portions in Isanti and Anoka Counties, as well as a geographically small but highly populated area in Washington County. In its application and oral testimony, CLRS focused on the Chisago County Community Health Plan, and did not discuss the other counties' plans. Therefore, it is impossible to further discuss the relationship between the proposed license upgrade and the plans of the other three counties. There is no reason to believe, however, that within the Applicant's PSA there is any significant difference between the health problems of the Chisago population and the health problems of the populations in the other three counties.

Recommendations or comments of Governing Bodies of Counties and Municipalities
Who would be Served

28. The Applicant has collected substantial support from the area proposed to be served. Those indicating support for the proposed upgrade include the following:

County Commissioners	Chisago County Washington County
Cities	Center City Chisago City Lindstrom Wyoming
Townships	Columbus Lent Linwood Wyoming
Related Entities	Chisago County Sheriff's Office Shafer Volunteer Fire Department Lindstrom Police Department North Branch Area Rescue St. Croix County EMS North Memorial Life Link III Stacey-Lent First Responders
other Entities Department	Chisago County Public Health Chisago Health Services Central Minnesota EMS Council Chisago Lakes Hospital District

Each of the above entities submitted either a letter of support or offered oral testimony supporting the application.

Deleterious Effects on Public Health from Duplication

29. As discussed more fully in the Memorandum, any discussion of "duplication" must distinguish between two different kinds of duplication:
(1) overlapping PSAs; or (2) attempts to actively serve an area. PSAs do not describe the areas actually being served by any of the ambulance services described in this Report. Instead, the active service areas are primarily determined by the dispatchers at the 911 public service answering points. In Chisago County, at least, the Chisago County Sheriff's Office drew boundary lines for police, fire and rescue service zones in Chisago County as required

for the Enhanced 911 system. The boundaries were taken from existing maps used by the 911 dispatcher. Those existing maps were determined by response time in miles from the home base of the responder. During 1993, the Sheriff's Office attempted to have the EMS entities mutually agree upon boundaries, but they were unable to do so, so the old boundary lines used in Chisago County remained essentially as they had been prior to the transition to Enhanced 911. Now, when a 911 call is received by the Chisago County Sheriff's Office,

the rescue service is dispatched based upon the Sheriff's boundary lines, without regard to whether it is a BLS service or an ALS service. In other words, the Sheriff does not ask a caller for information to determine whether or not to dispatch an ALS ambulance or a BLS ambulance. Instead, the Sheriff dispatches whichever ambulance has been assigned the caller's location pursuant to the Sheriff's boundary lines. While the maps do not have any ambulance service operating outside of its PSA, the practical service area boundaries are much smaller than the PSAs: they are the Sheriff's 911 dispatch boundaries.

30. The deleterious effects of competition are much worse when there is competition within the practical boundaries (in this case, the Sheriff's boundaries) than when there are overlapping PSAs. Virtually all of the witnesses who testified were satisfied with the cooperation which has existed between the services using the Sheriff's boundaries. The Administrative Law Judge finds that the deleterious effects of competition (where demand is insufficient to support additional services, leading to either sacrifices in quality or increased rates and public subsidies) in the area described in this Application are negligible, so long as the Sheriff's boundaries continue to be honored. The Sheriff's boundaries are, in effect, mini-PSAs, within which there is little competition.

31. While the Sheriff's boundaries determine which responder is dispatched to a 911 call, those boundaries do not determine which responder can be called for non-911 calls. For example, if the clinic in Wyoming has a patient who must be transported in an ALS ambulance, currently their only "local" choice for ground transportation is DMH, as DMH is the only ALS service currently licensed to serve Wyoming. If this application were granted, that clinic would have a choice of local ground ALS transporters -- DMH or CLRS. To the extent that DMH loses business to CLRS which is not replaced by population growth or some other factor, then there will be a deleterious effect on DMH's revenues.

32. The record does not contain any data on the number of non-911 calls which would be subject to competition if this petition were granted. DMH did submit data for the March-November 1993 period which indicates that 77% of DMH's runs came from areas where DMH and CLRS's PSAs do currently overlap. Twenty-three percent of DMH's calls during that period came from non-duplicated areas. Of a total of 1040 trips during the March-November period, 800 came from areas where the PSAs overlap, and 240 came from areas where they do not. The record does not disclose, however, how many of those 800 runs from the overlapping area were 911 calls, and how many were non-911 calls. The exhibit (Ex. 5) indicates that 225 of the 800 runs were "DMH scheduled transfers". There is no further explanation in the exhibit, nor was there discussion during the hearing, exactly what they represent, but

assuming, Arguendo, that they are non-911 transfers, they would represent 21.6% of DMH's total volume. As non-911 calls, they could be at risk of competition if the upgrade is granted. However, to the extent that they are controlled by DMH, then they are not at risk.

33. There are strong institutional ties between the DMH ambulance and the DMH hospital. Similarly, there are strong institutional ties between CLRS and some of the medical providers in Chisago County. Chisago Health Services, Inc. represents a merger between private doctors and a public hospital. The doctors staff the hospital, and one of them serves as the medical director of

CLRS. Chisago Health Services not only owns and staffs the Chisago Lakes Hospital, it also operates clinics in North Branch and Wyoming. If a patient at the Wyoming Clinic needs transport to another facility, the Clinic will call on CLRS rather than DMH whenever possible. If a medical situation is acute, they will call 911. But their preference is to call CLRS, and they would like to be able to call CLRS in every case. CLRS is based at the Chisago Lakes Hospital, and CLRS personnel are provided with living quarters there while on duty. The hospital has provided training and skill maintenance opportunities in the emergency room. In short, CLRS is the Chisago Hospital's ambulance, whereas DMH is the Forest Lake Hospital's ambulance. Both hospitals, and their related entities, will call on their own ambulance first. The amount of business which DMH would lose from calls from Chisago Health Services-related facilities is unknown. It was not stated in this record. The Administrative Law Judge believes, however, that Chisago Health Services-related facilities are already directing as much business as possible to CLRS. The only remaining business would be ALS transports which could not be handled by CLRS. Similarly, DMH is getting the lion's share of business from the Forest Lake Hospital. The impact of the upgrade, and its theoretical competition, therefore, may be quite small.

34. Any "lost business" will quickly be replaced by the increased calls resulting from population growth. Chisago County is a rapidly growing area. Its population has grown almost 19% between 1980 and 1990, and projections are for even faster growth in the next ten years. Due to the location of I-35 on the western edge of the county, and CLRS's PSA (as well as DMH's PSA) being centered in the west of the county, the population growth in CLRS's (and DMH's) PSA is likely to exceed that of the county as a whole. There was one reference to a population growth of 30% in the past ten years, but the details were not provided. Regardless of the details, there is rapid population growth occurring in CLRS's and DMH's PSAs.

35. CLRS is likely to attempt to expand its operations. The record does not reflect how the Sheriff's decisionmaking process works, other than that when the boundaries were first drawn, they were based on lowest response time. In an article in the Forest Lake Times of November 18, 1993 (Ex. 3), a story appeared reporting on the appearance of CLRS personnel before the Wyoming City Council. In that story, CLRS's director, Jill Grainger, is quoted as follows:

Recognizing that Wyoming has had a relationship with District Memorial [DMH], we are not interested in interrupting that. If at some point District Memorial ceases to exist or their ambulance service is no longer owned by the hospital and there was a potential for movement, or the citizens became dissatisfied with what was happening, then it becomes an issue that needs to be settled between the citizens and potential providers in that area. Whether it's District Memorial or us or both.

In an article which appeared in "Momentum", published by the Chisago Health Services Public Relations Department, Grainger is reported as indicating that

CLRS would be willing to discuss the possibility of locating an ambulance in

Wyoming at some time in the future. Ex. 5. If CLRS were to base an ambulance

in Wyoming, it would alter the existing pattern of response times. Whether or

not the Sheriff's Office would alter its 911 dispatch lines in response to such a change is unknown.

36. Threats to 911 dispatch boundaries are not unknown to CLRS.

On August 15, 1991, CLRS and four other ambulance services sent a letter to the Department of Health in response to rumors that Health One Transportation had filed an application to upgrade its license. Health One's PSA overlaps PSAs of the five ambulance services. The letter requests that the Department convene a meeting between Health One and the five ambulance services to discuss Health One's proposal because "approval of Health One's application could adversely affect our relationships within our PSAs and threaten our status as 911 providers". Ex . 6.

37. Uncertainty developed early in 1993 regarding the future plans of DMH. The hospital's financial condition was recounted in local newspapers. During the summer of 1993, DMH signed a letter of intent to lease its hospital to a larger health care organization. Persons involved in DMH's ambulance service thought that this presented an opportunity to realign DMH's ambulance locations. While they were considering such realignment, they spoke with township officials in Wyoming township, and indicated they might be moving the location of their ambulance away from the Forest Lake Hospital, and farther away from Wyoming Township. The Wyoming Township officials became concerned that this might result in longer response times and a lessening of service. By the time of the hearing, DMH's plans had changed, and DMH's director indicated that he had now decided to move the ambulance from the Forest Lake Hospital to the City of Wyoming. He indicated that this decision was based on an analysis of DMH's PSA, rather than a response to CLRS's application. This change left the Wyoming township officials confused, and unsure of DMH's future plans. As noted in the previous Finding, to the extent any ambulance is based in the city of Wyoming, it would change the response time at various locations. It is uncertain whether or not the Sheriff's 911 boundaries would then change or not.

Furthermore, Wyoming Township is in Chisago County, while Forest Lake is in Washington County. Wyoming Township has expressed concern about the continued service from DMH because neither Chisago County nor Wyoming Township

pay any taxes to support DMH. On the other hand, the city of Forest Lake and Washington County do provide financial support to DMH. Wyoming Township officials question DMH's longterm commitment to Chisago County locations when Chisago County is not providing any tax revenues. They fear that the Washington County taxpayers will demand that ambulances be removed from places like Wyoming so they can better serve the Washington County/Forest Lake taxpayers. DMH counters that it would ask the city of Wyoming to provide funding for a Wyoming-based ambulance. The city has decided to support the application of CLRS.

38. Both the city of Wyoming and Wyoming Township have expressly stated their support for CLRS and their lack of concern over duplication. At the request of CLRS, both passed resolutions indicating that potential duplication "will only enhance the emergency medical services available to district residents". Ex. 7 and Ex. 14.

39. The Chairman of the Chisago County Board indicated that one motivation for supporting the application was newspaper articles raising questions about the financial condition of the Forest Lake Ambulance (or its underlying hospital, he was not clear). He suggested that it made sense to

him to have the CLRS license in place so that if something happened to Forest Lake, there would be continuity of ALS service.

Estimated Effect on the Public Health

40. Granting the proposed license upgrade will improve the delivery of emergency health services to persons who are currently being served by CLRS's BLS ambulance. An upgrade to ALS licensure and capabilities will allow CLRS to better address life-threatening circumstances, such as situations requiring rapid administration of pharmacological or respiratory therapy and paramedic expertise.

41. The record supports the contention that early ALS intervention will reduce morbidity and mortality rates within the communities served. Heart disease, bee stings (anaphylactic shock), ventricular tachycardia or ventricular fibrillation, shock, acute diabetic reactions, respiratory emergencies requiring oxygen delivery, and multi-system trauma are all examples of situations benefited by ALS capabilities.

42. Trauma deaths, such as those resulting from automobile accidents and recreation accidents, should be reduced as the result of better trained and better equipped personnel who are able to perform a broader scope of pre-hospital treatment. The only data in the record suggests that ALS versus BLS is a significant predictor of per capita trauma mortality rates. all, Ex. 19A. Similarly, the only evidence in the record suggests that survival from out-of-hospital cardiac arrests is improved when ALS intervention is available. Son, Ex. 19B.

Benefit to Public Health Versus Costs Associated with Proposed Service

43. For the area where there is no duplication between CLRS and DMH, the improved medical outcomes noted above outweigh the increased costs associated with ALS runs as opposed to BLS runs. CLRS has estimated that in 1994 it will cost an additional \$210 for an ALS run, as opposed to a BLS run. The record contains no evidence to suggest that this is too high a price to pay for an improved outcome. On the contrary, the record does contain concerns expressed by citizens who currently receive BLS service to the effect that they "deserve" to have at least the option of ALS service available to them. Once people were told of the differences in outcomes and the other data supporting ALS over BLS, they made clear their desire for an upgrade to licensure.

Based on the foregoing Findings, the Administrative Law Judge makes the

following:

CONCLUSIONS

1. The Commissioner of Health and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 114.802 and 14.50 (1992). The Notice of Hearing was proper in all respects and all procedural and substantive requirements of law and rule have been fulfilled.

2. There were no formal intervenors in this proceeding. Therefore, the only formal party is the Applicant, Chisago Lake Rescue Service.

3. The burden of proof in this matter is upon the Applicant, Chisago Lake Rescue Service, to demonstrate by a preponderance of the evidence that the license should be granted. Minn. Rule pt. 1400.7300, subp. 5.

4. The statutory standard applicable to this proceeding is that set forth in Minn. Stat. 144.802, subd. 3(g) (1992), which provides, in pertinent part:

The Administrative Law Judge shall review and comment upon the application and shall make written recommendations as to its disposition to the Commissioner within 90 days of receiving notice of the application. In making the recommendations, the Administrative Law Judge shall consider and make written comments as to whether the proposed service..... is needed, based on consideration of the following factors.

(1) the relationship of the proposed service..... to the current community health plan as approved by the Commissioner..... ;

(2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;

(4) the estimated effect of the proposed service . . . on the public health;

(5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service

5. After due consideration of all of the factors enumerated in the above-quoted statutory provision, and for the reasons set forth in the foregoing Findings and the attached Memorandum, the Administrative Law Judge concludes that the Applicant, Chisago Lake Rescue Services, has satisfied the statutory criteria.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health grant the Application of Chisago Lakes Rescue Service to provide ALS service within its current primary service area.

Dated this 10th day of January, 1994.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, Tapes 20,296 and 20,315, three sides.

MEMORANDUM

Persons testifying at the hearing asked why they should not be able to have ALS service in the event of a heart attack or a serious automobile accident. They did not accept the idea that the Sheriff's boundary line determined what ambulance would be called, and that it was only a matter of which side of the line they were on as to whether they got a BLS ambulance and BLS personnel, or an ALS ambulance with ALS personnel. They had a hard time grasping the idea that although they were theoretically able to get ALS service from DMH, as a practical matter, an emergency call to 911 would produce a BLS crew if they were in the territory of one of the BLS ambulances. The fact that DMH's theoretical service area overlapped CLRS's theoretical service area, and that DMH's opposition was based upon a fear of competition, did not impress most of the audience.

This is not a situation where a completely new ambulance service is seeking to open up a BLS operation in an area already served by another service. That was the case in *Twin Ports Convalescent, Inc. v. Minnesota State-Board of Health*, 257 N.W.2d 343 (1977). In that case, the court had no difficulty concluding that the intent of the statute was to avoid deleterious competition. The court reasoned that where the demand was insufficient to support additional services, a new service competing with an old one meant either a reduction in quality or an increase in rates.

In this case, an existing ambulance is seeking to upgrade its license from BLS to ALS. It is not seeking to expand its PSA, nor to alter the Sheriff's 911 dispatch boundaries. As a practical matter, there is not all that much competition between DMH and CLRS, because the Sheriff has drawn a boundary separating the two for 911 calls. Due to the loyalties that exist

between the two hospitals and their respective ambulance services, a meaningful amount (quantity unknown) of the non-911, discretionary business will remain with whichever ambulance is getting it at the current time. The actual competition, therefore, which will result from the upgrade is minimal. Moreover, the substantial population growth in this suburban area means that any "lost business" will soon be replaced by new business.

The negative impacts from that minimal amount of competition are substantially outweighed by the positive impacts on the public health by

making ALS service available in an area which, as a practical matter, only receives BLS service currently. Some of the citizens who spoke at the hearing because they wanted an ALS ambulance to come for them. In the event of a heart attack or automobile accident had little regard for the concerns over competition. They spoke about the 911 system and how it denied them better health care if they happened to be on the wrong side of a line when they needed emergency help. They understood that this was not a case (such as Twin Ports) where one ambulance was seeking to provide similar service to that already being provided. Especially after hearing from the doctors about the differences in medical outcomes, the public focused on the difference between BLS and ALS.

For the reasons cited earlier in this Memorandum, the Administrative Law Judge does not believe that the Twin Ports case controls this upgrade decision. Instead, what controls is the statutory list of factors quoted in the Conclusion. Based upon those factors, the deleterious effects of the proposed upgrade are substantially outweighed by the benefits to the public health.

A.W.K.